

Remarks

Applicants have herein canceled claims 2-10, 14, 15, 18, 21 and 22, without prejudice or disclaimer. Applicants reserve the right to pursue the subject matter encompassed by all canceled claims in one or more divisional or continuation applications. Applicants have herein amended claim 17 to eliminate a multiple dependency. The Title of the specification has been amended to reflect more accurately the claimed elected invention. Additionally, new claims 24-55 have been added herein to expand the embodiments of the elected subject matter.

Support for amended claims 24-55 can be found throughout the specification as filed. More specifically, support for new claims 24, 26, 30, 32 can be found at, for example, page 110, Table 1A, row 4; and pages 40-42, paragraphs [143]-[149]. Support for new claims 25, and 31 can be found at, for example, page 110, Table 1A, row 4; and page 362, paragraph [568]. Support for new claims 27, 33, 38, 43, 48, and 53 can be found at, for example, pages 356-359, paragraphs [550]-[557]; pages 369-373, paragraphs [599]; and pages 579-580, Example 9, paragraphs [1299]-[1302]. Support for new claims 28, 34, 39, 44, 49, and 54 can be found at, for example, pages 413-417, paragraphs [721]-[734]; and pages 586-612, Example 13, paragraphs [1323]-[1399]. Support for new claims 29, 35, 40, 45, 50, and 55 can be found at, for instance, pages 359-365, paragraphs [558]-[576]; and pages 571-579, Examples 5-8, paragraphs [1262]-[1298]. Support for new claims 36, 37, 41, and 42 can be found at, for example, page 110, Table 1A, row 4; and pages 40-42, paragraphs [143]-[149]; and pages 328-341, paragraphs [478]-[514]. Support for new claims 46, 47, 51, and 52 can be found at, for example, pages 347-352, paragraphs [527]-[540]. Thus, no new matter has been added.

Upon entry of the present amendments, claims 1, 11-13, 16-17, 19-20, and 23-55 will be pending.

Provisional Election With Traverse

The Examiner has issued an election requirement separating pending claims 1-23 into eight different groups. *See*, Paper No. 103103, pages 2-3. Within each group, the Examiner has also required election of a single selected sequence. *See*, Paper No. 103103, page 3.

To comply with the pending election requirement, Applicants herein provisionally elect, *with traverse*, the claims currently restricted to Group II (*i.e.*, claims 11, 12, 16, and new claims 24-55), directed to polypeptides of SEQ ID NO: 86 and that encoded by the HKGAJ54 cDNA contained in the ATCC Deposit No. 209224.

Applicants respectfully traverse the present election requirement.

Applicants point out that even where patentably distinct inventions appear in a single application, restriction remains improper unless the examiner can show that the simultaneous search and examination of these groups would entail a “serious burden”. M.P.E.P. § 803. Applicants submit that a search of the claims of any of the groups would also provide useful information for the claims of the other groups. For example, in many if not most publications disclosing a protein, the authors also disclose nucleic acids encoding the protein, antibodies to the protein, and methods of making and using the same. Thus, since the searches for proteins, nucleic acids encoding such proteins, antibodies to such proteins, and methods of making and using the same commonly overlap, Applicants respectfully submit that the Examiner’s assertion that the combined search and examination of such compositions and methods using the same would entail a serious burden has been rebutted, even assuming *arguendo* that all of the searches were not coextensive.

Accordingly, in view of M.P.E.P. § 803, all of the claims of Groups I-VIII should be searched and examined in the present application. Applicants therefore respectfully request that the restriction requirement under 35 U.S.C. § 121 be reconsidered and withdrawn.

Further, although not acquiescing to the restriction requirement, Applicants nevertheless note that the claims of provisionally-elected Group II and the claims of Groups V and VIII are related as between a product and a process for using the product. Pursuant to the procedures set forth in the Official Gazette notice dated March 26, 1996 (1184 O.G. 86), if an elected product claim is found allowable, “withdrawn process claims which depend from or otherwise include all of the limitations of the allowable product claim will be rejoined.” M.P.E.P. § 821.04. Accordingly, Applicants respectfully request that if any of the claims of Group II, *i.e.*, claims 11, 12, 16, and new claims 24-55, are found allowable, then the process claims of Group V, *i.e.*, claims 19 and 20, and Group VIII, *i.e.*, claims 11 and 17, be rejoined and examined for patentability.

Applicants retain the right to petition from the restriction requirement under 37 C.F.R. § 1.144.

Conclusion

Applicants respectfully request that the above-made remarks be entered and made of record in the file history of the instant application. The Examiner is invited to call the undersigned at the phone number provided below if any further action by Applicant would expedite the examination of this application.

If there are any fees due in connection with the filing of this paper, please charge the fees to our Deposit Account No. 08-3425. If a fee is required for an extension of time under 37 C.F.R. § 1.136, such an extension is requested and the fee should also be charged to our Deposit Account.

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Respectfully submitted,

By

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